

Contents

Acknowledgments	xiii
Foreword	xvii
Preface	xix
Introduction: Standards of Value	1
1 Common Standards and Premises of Value	17
Common Standards and Premises	17
Price, Value, and Cost	18
Defining a Standard of Value	19
Premises of Value	20
Common Standards of Value	21
Fair Market Value	21
Fair Value	23
Investment Value	24
Intrinsic Value	25
Book Value	28
Common Operational Premises Underlying the Standard of Value	28
Going Concern	28
Liquidation Value	29
Other Issues	30
Fair Value in Alternate Contexts	30
Fair Market Value in Alternate Contexts	31
Standards of Value in the International Context	32
Summary	33
2 Fair Market Value in Estate and Gift Tax	35
Introduction	35
Common Definitions of Fair Market Value	36

History of Fair Market Value	37
Elements of Fair Market Value	41
Price at Which a Property Would Change Hands	42
Willing Buyer	44
Willing Seller	53
No Compulsion to Buy or Sell	56
Reasonable Knowledge of Relevant Facts	61
Common Discounts	77
Summary	84
3 Fair Value in Shareholder Dissent and Oppression	87
Introduction	87
Fair Value	91
Early References to Fair Value	91
Fair Value as Defined by Various Authorities and Statutes	92
Dissenter's Rights	95
Overview and History	95
Growth in Popularity of the Appraisal Remedy	98
Context of Modern Appraisal Rights	99
Oppression Remedy	100
Development of Oppression Remedy	100
Alternative Remedies	104
Context of Oppression Remedy	105
Freeze-Outs and Squeeze-Outs	106
Recognizing Oppression	108
Reasonable Expectations	110
Breach of Fiduciary Duty	112
Heavy-Handed and Arbitrary or Overbearing Conduct	113
Standard of Value in the 50 States	115
Breaking Down the Components of Fair Value	120
Before the Effectuation of the Corporate Action to Which the Shareholder Objects	120
Excluding Any Appreciation or Depreciation in Anticipation of the Corporate Action Unless Exclusion Would Be Inequitable	122
Current and Customary Valuation Techniques	123
Discounts and Premiums	129
Level of Value	130
Other Shareholder Level Discounts	131

Entity-Level Discounts	134
Control Premiums	135
Extraordinary Circumstances	137
Equitable Adjustments	146
Delaware’s Entire Fairness	146
Consideration of Wrongdoing in Calculating Fair Value	149
Discounts Used as an “Equitable Adjustment”	154
Damage Claims	159
Fair Value and the Minority Shareholder	161
Summary	162
4 Standards of Value in Divorce	165
Introduction	165
Marital Property: General Background and History	168
Identification of Marital Property and Separate Property	170
Relationship between Valuation and Identification of Intangible Assets	173
Appreciation on Separate Property	174
Premises and Standards of Value in Divorce	177
Premises of Value	177
Standards of Value	179
Premises of Value Revealed through the Valuation of Insurance Agencies	183
Concepts of Value under the Two Premises	185
Standards of Value in Divorce among the 50 States	186
Lack of Statutory Insight	186
Revealing Standard of Value through Case Law	188
Toward a Standard of Value Classification System	192
Value in Exchange	201
Goodwill	201
Lack of Control and Marketability Discounts under Value in Exchange	216
Buy-Sell Agreements under Value in Exchange	221
Value to the Holder	226
Goodwill	226
Shareholder Level Discounts under the Value to the Holder Premise	238
Buy-Sell Agreements under Value to the Holder	239
Summary	242

5 Fair Value in Financial Reporting	245
Introduction	245
Fair Value in Financial Reporting: What Is It?	246
History of Fair Value in U.S. Accounting Literature	249
Application of the Fair Value Standard to Business Combinations	253
Application of the Fair Value Standard to Asset Impairment Tests	258
Interpretation of Fair Value Compared to Other Standards of Value	263
Fair Value in Financial Reporting versus Fair Value in Dissenters' Rights Cases	263
Fair Value in Financial Reporting versus Investment Value	263
Fair Value in Financial Reporting versus Fair Market Value	263
Audit Issues	266
Summary	267
Sources of Information	269
Appendix A International Business Valuation Standards	271
Appendix B Fair Value in Dissent and Oppression Chart	281
Appendix C Standard of Value Divorce Chart	299